

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-120729
		C-120730
Plaintiff-Appellee,	:	C-120731
		C-120732
vs.	:	TRIAL NOS. 05CRB-2336
		C-00CRB-41544
LAMIN BALDEH,	:	01CRB-19590
		04CRB-25554
Defendant-Appellant.	:	

JUDGMENT ENTRY.

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Lamin Baldeh appeals from each of four judgments entered by the Hamilton County Municipal Court overruling, in each case, Baldeh's motion to withdraw his guilty or no-contest plea to a minor-misdemeanor drug offense. We reverse the court's judgments.

Baldeh was convicted in municipal court in 2001 and 2005 upon no-contest pleas to minor-misdemeanor drug possession. In 2000 and 2004, he was convicted of minor-misdemeanor drug possession, upon "pa[ying] out" citations for, and thus pleading guilty to, the offenses. *See* R.C. 2935.26(C) (requiring an offender to "sign" a guilty plea when paying a minor-misdemeanor citation in lieu of a court appearance). He did not appeal those convictions. Instead, in September 2012, he filed in each case a motion to withdraw his plea.

In these appeals, Baldeh advances multiple assignments of error that, distilled to their essence, challenge the overruling of his motions. The challenges are well taken.

Baldeh sought by each motion to withdraw his plea pursuant to R.C. 2943.031, on the ground that he had not been advised of the consequences of his conviction for his immigration status. R.C. 2943.031(A) “creates a substantive right that supplements” Crim.R. 11 by “effect[ively] graft[ing]” onto the procedural rule a requirement that a noncitizen defendant be advised that his conviction “may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.” *State v. Francis* 104 Ohio St.3d 490, 2004-Ohio-894, 820 N.E.2d 355, ¶ 29. R.C. 2943.031(D) requires a court, upon motion, to

set aside the judgment and permit the defendant to withdraw a plea of guilty or no contest and enter a plea of not guilty or not guilty by reason of insanity, if * * * the court fails to provide the defendant the advisement described in division (A) of this section, the advisement is required by that division, and the defendant shows that he is not a citizen of the United States and that the conviction of the offense to which he pleaded guilty or no contest may result in his being subject to deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

A trial court, confronted with an R.C. 2943.031(D) motion, “must exercise its discretion in determining whether the statutory conditions are met.” And that determination may be reversed on appeal only upon an abuse of that discretion. *Francis* at ¶ 36.

The record before us, including the evidence offered by Baldeh in support of his motions, demonstrates that the R.C. 2943.031(A) advisement was required. It shows that Baldeh is not a United States citizen. It shows that he had been convicted of drug possession in New Jersey in 1999 and thus had, in his subsequent Ohio cases,

entered a guilty or no-contest plea to a minor misdemeanor charged after a previous minor-misdemeanor conviction. And it shows that he had not, in any of his Ohio cases, indicated either verbally on the record or in a written plea form that he was a United States citizen. *See* R.C. 2943.031(A) and (B). Baldeh also must be “presumed not to have received the advisement,” because the record is devoid of evidence demonstrating that he was, in any of the four proceedings, advised in any way of the possible immigration consequences of his conviction. *See* R.C. 2943.031(E). And the record shows that, based on his convictions, he was being deported.

Thus, in each case, the R.C. 2943.031(A) advisement was required, but was not provided, and Baldeh’s conviction had subjected him to deportation. Moreover, his delay in seeking to withdraw his pleas did not provide a basis for overruling his motions, when the record shows that he did not learn of the adverse immigration consequences of his convictions until May 2012. *See Francis* at ¶ 42 (holding that “even a considerable delay in filing the motion to withdraw will not be a factor supporting denial of the motion * * * when the immigration-related consequences * * * did not become evident for some time after the plea was entered”).

We, therefore, hold that the court abused its discretion in overruling the motions. Accordingly, we sustain the assignments of error, reverse the judgments overruling the motions, and remand for further proceedings consistent with the law and this judgment entry.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on July 5, 2013

per order of the court _____.
Presiding Judge